

Probematic Areas in Copyright Enforcement

Country Report Austria

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Overview

- Copyright Enforcement and Data Protection
- Private Criminal Action
- Contributory Infringement

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Copyright Enforcement and Data Protection (Supreme Court ruling of 14.7.2009, 4 Ob 41/09x)

- ISPs are under an obligation to disclose the identity of a copyright infringer (§ 87b Copyright Act)
- The right holder requested the disclosure of the identity of a person that committed a copyright infringement. However the user was assigned a temporary IP address.
- Temporary IP addresses are traffic data
- Traffic data can only be processed for certain purposes (eg billing); the usage for other purposes is not permitted.
- Processing of traffic data by the ISP would be unlawful. The defendant cannot be placed under an obligation to act in an unlawful manner.

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Private Criminal Action

- Under Austrian law criminal actions against copyright infringers are subject to private prosecution ("Privatanklage"). Until 2008 criminal procedure law provided useful remedies for securing evidence.
- The reform of criminal procedure law removed the possibility to bring a private criminal action without knowing the identity of the infringer (§ 71 Code of Criminal Procedure).
- Right holders are left with civil information claims.
- Amendment to the Code of Criminal Procedure is planned.

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Contributory Infringement

- One only commits indirect infringement if he actively and knowingly induces or supports another person to commit a copyright infringement.
 - Principles of tort law are applicable (§ 1301 Civil Code)
- Adequate causation of the (direct) infringement alone does not constitute liability.
 - The indirect infringer must know all the facts about the illegal activity of the direct infringer.
 - The indirect infringer is also liable if he violates a surveillance duty
 - The duty is limited to “exceptional circumstances”
 - The surveillance duty is also limited to situations where the infringement is obvious for a laymen.
- No general liability of parents for the file sharing activities of children on their computer.
 - No duty to monitor the internet use of children.
(Supreme Court ruling, 22. 1. 2008, 4 Ob 194/07v.)